

**104-3002 version A / Perform Notarial Services
10 May 2001**

SECTION I. ADMINISTRATIVE DATA

**All Courses
Including This
Lesson**

<u>Course Number</u>	<u>Course Title</u>
512-71D30	Legal Basic Noncommissioned Officers Course (71D)

**Task(s)
Taught(*) or
Supported**

<u>Task Number</u>	<u>Task Title</u>
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**Reinforced
Task(s)**

<u>Task Number</u>	<u>Task Title</u>
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**Academic
Hours**

The academic hours required to teach this TSP are as follows:

	<u>Resident Hours/Methods</u>
	3 hrs / Conference / Discussion
	30 mins / Practical Exercises
Test	1 hr
Test Review	30 mins
Total Hours:	5 hrs

**Test Lesson
Number**

	<u>Hours</u>	<u>Lesson No.</u>
Testing (to include test review)		N/A

**Prerequisite
Lesson(s)**

<u>Lesson Number</u>	<u>Lesson Title</u>
None	

**Clearance
Access**

Security Level: Unclassified
Requirements: There are no clearance or access requirements for the lesson.

**Foreign
Disclosure
Restrictions**

FD5. This product/publication has been reviewed by the product developers in coordination with The Judge Advocate General's School foreign disclosure authority. This product is releasable to students from all requesting foreign countries without restrictions.

References

<u>Number</u>	<u>Title</u>	<u>Date</u>	<u>Additional Information</u>
AR 27-1	Judge Advocate Legal Services	03 Feb 1995	
AR 27-3	The Army Legal Assistance Program	10 Sep 1995	
AR 27-55	Notarial Services	10 Apr 1997	

**Student Study
Assignments**

None.

**Instructor
Requirements**

One instructor per small group consisting of between 11 and 16 students.

Requirements**Additional
Support
Personnel
Requirements**

<u>Name</u>	<u>Quantity</u>	<u>Man Hours</u>
None		

**Equipment
Required
for Instruction**

<u>Name</u>	<u>Quantity</u>	<u>Expendable</u>
PROJECTOR, OVERHEAD	1	No

**Materials
Required**

Instructor Materials:
Training Support Package 181-D-3002.

Student Materials:
AR 27-55 (Notarial Services) and Student Handouts 1 through 8, which are located at Appendix D in TSP 181-D-3002.

**Classroom,
Training Area,
and Range
Requirements**

GENERAL INSTRUCTION CLASSROOM, 20 PN

**Ammunition
Requirements**

<u>Name</u>	<u>Student Qty</u>	<u>Misc Qty</u>
None		

**Instructional
Guidance**

NOTE: Before presenting this lesson, instructors must thoroughly prepare by studying this lesson and identified reference material.

**Proponent
Lesson Plan
Approvals**

<u>Name</u>	<u>Rank</u>	<u>Position</u>	<u>Date</u>
Calvin M. Lederer	COL	Commandant	10 May 2001
Sarah P. Merck	COL	Deputy Commandant	10 May 2001
George A. Figurski	MAJ	Director, TDD	10 May 2001
Keith R. Willard	SSG	Course Developer	10 May 2001

SECTION II. INTRODUCTION

Method of Instruction: <u>Conference / Discussion</u>
Instructor to Student Ratio is: <u>1:16</u>
Time of Instruction: <u>5 mins</u>
Media: <u>Small Group Instruction (SGI)</u>

Motivator

Good (morning) (afternoon). My name is (). The next lesson is entitled, "Perform Notarial Services."

One of the most important functions you will perform as a Legal Noncommissioned Officer (NCO) assigned to a Legal Assistance Office is providing notarial services to authorized legal assistance clients in your military community. Notarizing documents is a "quality of life" service provided by military legal assistance offices to our clients. This service enables our clients to efficiently handle their legal matters by expeditiously obtaining legally notarized documents at no cost. The Legal NCO must be aware of what documents he or she is legally authorized to notarize and the proper procedures for performing notarial services.

NOTE: Show slide 1, Terminal Learning Objective.

Terminal Learning Objective

NOTE: Inform the students of the following Terminal Learning Objective requirements.

At the completion of this lesson, you [the student] will:

Action:	Perform Notarial Services
Conditions:	Given a requirement to perform a notarial service in conjunction with your duties as a Legal NCO, and access to AR 27-1, AR 27-3, and AR 27-55.
Standards:	Identify and understand what notarial services you are legally authorized to perform, and perform these services without error.

Safety Requirements

None.

Risk Assessment Level

Low – low

Environmental Considerations

None.

Evaluation

You will be administered a performance test at the conclusion of this lesson. The test consists of 25 multiple-choice and true/false questions. You will be expected to achieve a minimum score of 70 percent (18 out of 25 questions) to pass this test.

**Instructional
Lead-In**

Notarial services are one of the most important and routine functions an Army legal assistance office will perform. As a Legal NCO, you must be intimately aware of your authority, as well as the authority of your subordinates and fellow legal assistance employees, to perform notarial services. You must also be closely familiar with the different types of notarial services; what notarial services you are authorized to perform; the procedures to accurately perform these notarial services; certain notarial service prohibitions; and the vital importance of meticulously maintaining and retaining a notarial log.

SECTION III. PRESENTATION

1. Learning Step / Activity 1. Define the Basis for Notarial Authority

Method of Instruction: Conference / Discussion
Instructor to Student Ratio: 1:16
Time of Instruction: 25 mins
Media: Small Group Instruction (SGI)

NOTE: Show slide 2, Legal Assistance

a. Legal assistance is one of the most important services the Judge Advocate General's Corps (JAGC) provides to our military communities. Notarizing documents is a routine component or service offered in Army Legal Assistance Offices.

(1) Legal Assistance is essential to the preparedness and readiness of our military forces. Soldiers are more readily able and mentally prepared to perform their military mission if they know that their legal matters are in order prior to deployment. These legal matters may include a properly executed will or an accurately drafted and notarized power of attorney. This directly aids the Army successfully accomplish its mission as Commanders may focus their attention away from the personal needs of their soldiers and their families and to the military mission.

(2) Legal Assistance is also an important "quality of life" service provided to our soldiers, retirees and their family members. With personal benefits being reduced throughout the Army, soldiers still realize that they can go to their local JAG Office and obtain free, accurate, and timely legal assistance. Some of these services would cost them hundreds of dollars in the civilian community. Legal assistance services make a difference in their lives.

(1) Legal Assistance is not only beneficial to the client, it is also professionally rewarding to the Judge Advocate and Legal NCO. Legal NCOs, serving in a Legal Assistance Office, have great and varied responsibilities. They should take great pride in assisting the client and helping the Army accomplish its mission. There's nothing better than walking through the Post Exchange or Commissary and having a soldier, retiree, or family member come up to you and say, "thanks", for your hard work and help.

NOTE: Show slide 3, What is a Notary?

b. A notary acts as an official, unbiased witness to the identify and signature of individuals who come before the notary for some specific purpose, such as taking an oath or affirmation, or signing a legal document. (See AR 27-55, paragraph 3-3b) The notary attests that certain formalities have been observed and followed.

NOTE: Show slide 4, What are Notarial Services?

c. Notarial services are one of the most important and routinely performed functions in an Army Legal Assistance Office. Notarial services may include administering oaths; taking affidavits, sworn statements, depositions, or acknowledgments; attesting to the authenticity of signatures; and attesting to and certifying certain classes of documents in order to give them credit and authenticity. An individual performing notarial services will provide these services with integrity, diligence, and skill.

NOTE: Show slide 5, What does a Notary's Signature Indicate?

d. The signature of a notary indicates that the signer personally appeared before the notary on the date and at the location indicated. It also indicates that the signer was positively identified by the notary and that the signer acknowledged to the notary that the signature was freely made for the purposes stated in the document.

e. The signature of a notary is not evidence that the notary has knowledge of the contents of the document so signed, other than those specific contents that constitute the signature, execution, acknowledgment, oath, affirmation, affidavit, verification, or other act that the signature of that notary public documents. (See AR 27-55, paragraph 3-3c)

NOTE: Show slide 6, Certified True Copy

f. The notary attests by placing his signature and seal that the copy is a true and exact copy of the original document presented to the notary.

g. A certification by a notary public that a document is a certified true copy of an original document is not evidence to show that such notary public has knowledge of the document so certified. (See AR 27-55, paragraph 3-3c)

h. The signature of a notary is not a "signature guarantee" such as required for the transfer of a stock certificate or other financial instrument. Signature guarantees must be performed by stock brokers, bank officials, or other financial institutions that regularly deal with the financial instrument requiring the signature guarantee. (See AR 27-55, paragraph 3-3d)

NOTE: Show slide 7, Notarial Authority

i. In order for Legal NCOs to successfully perform the notarial services mission, they must first be intimately knowledgeable about their authority to notarize documents; what documents they are authorized to notarize; and what individuals are authorized to receive notarial services.

NOTE: Distribute Student Handout #1 (10 U.S.C. 1044a)

j. The first question a Legal NCO must address is: What is your authority to notarize documents?

(1) The answer is Title 10, United States Code (U.S.C.), Section 1044a (hereinafter 10 U.S.C. 1044a). 10 U.S.C. 1044a grants listed individuals general powers of a notary public

NOTE: Show slide 8, Notarial Authority - Legal NCOs

(1) 10 U.S.C 1044a(b)(4) and Army Regulation (AR) 27-55 specifically grants the powers of a notary public to Legal NCOs. 10 U.S.C. 1044a(b)(4) specifically states that persons with the general powers of a notary public include, "[a]ll other members of the armed forces; ... who are designated by regulations of the armed forces or by statute to have those powers." AR 27-55 is the Army Regulation that specifically designates the general powers of a notary public to certain Legal NCOs and Legal Specialists.

NOTE: Show slide 9, State or Foreign Law

(2) State or foreign law may also provide authority for Army personnel to provide notarial services. Army personnel providing notarial services pursuant to State or foreign law are referred to as "Civil Notaries". There are two types of Civil Notaries:

a. Army personnel who, as a result of an application, receive a commission as a public officer from a State or foreign government to perform notarial services.

b. Certain Army personnel designated by office, rank, or position under State law to provide notarial services.

(4) However, notarial authority granted by Federal statutes (e.g., 10 U.S.C. 1044a) is separate from, and additional to, any authority provided by State or foreign law.

NOTE: Show slide 10, Federal Preemption Doctrine

(5) Federal notarial authority and AR 27-55 supersede State authority and laws and may be exercised without geographic limitation. Under the Federal preemption doctrine, notarial services performed pursuant to Federal law are legally effective as notarial services for all purposes.

(6) State Notarial Laws. The laws of most States authorize certain United States Armed Forces members to provide notarial services within the military without obtaining commissions or appointment as civil notaries. AR 27-55 does not limit the application of such laws to Army personnel. All officer, enlisted, and civilian personnel so authorized may provide notarial services as part of their official duties.

(a) Notarial services authorized by States may include administering oaths, taking affidavits, taking sworn statements, taking depositions, taking acknowledgments, and certifying copies of documents.

NOTE: Show slide 11, State Notarial Laws

(b) Occasionally, a situation may arise for which the exercise of State notarial authority may be warranted. Before exercising such authority, the notary should determine the following:

(3) The State or States where the instrument is to be used.

(2) Who has the authority to provide the particular notarial service under the laws of the jurisdiction involved.

(3) For whom the particular notarial service may be performed under the laws of the jurisdiction involved.

(4) Whether a notary public possessing a civil notarial commission as a notary is available, especially in cases involving documents affecting the title to real estate or otherwise required to be entered upon the public record in any State.

NOTE: Conduct a check on learning and summarize the learning activity.

2. Learning Step / Activity 2. Identify the Persons Authorized to Perform Notarial Services

Method of Instruction: Conference / Discussion
Instructor to Student Ratio: 1:16
Time of Instruction: 25 mins
Media: Small Group Instruction (SGI)

a. Who may notarize documents?

NOTE: Show slide 12, Who May Notarize?

b. Authority to notarize a document first depends on whether the action is a military notary or civil notary.

(1) Army personnel providing notarial services pursuant to Federal statute, including 10 U.S.C. 1044a, are referred to as military notaries.

NOTE: Show slide 13, Who May Notarize? (Continued)

(2) Army personnel providing notarial services pursuant to State or foreign law are referred to as civil notaries. There are two types of civil notaries. They include:

(a) Army personnel who, as a result of an application, receive a commission as a public officer from a State or foreign government to perform notarial services.

- Commissioned and warrant officers on the active list of the Regular Army, and retired or Reserve commissioned and warrant officers serving on active duty under a call to duty in excess of 180 days, will not obtain or retain commissions as civil notaries, nor accept or retain the same by election, commission, or appointment (10 U.S.C. 973b). This prohibition does not affect the authority of an officer to serve as a civil notary under AR 27-55, paragraph 2-4.

(b) Certain Army personnel designated by office, rank, or position under State law to provide notarial services.

NOTE: Show slide 14, Military Notaries

c. 10 U.S.C. 1044a and AR 27-55, paragraph 2-2, designate the below-listed individuals as military notaries. These individuals have the general powers of notary public and of a consul of the United States in the performance of all notarial services to be used by any of the individuals listed in paragraph 2c(3) below.

(1) Military notaries include:

(a) All judge advocates and warrant officers who possess a MOSC of 550A.

(b) NCOs, including corporals, or legal specialist authorized by their supervising Staff Judge Advocate under AR 27-55, paragraph 1-6a, who:

(1) Possess a primary MOSC of 71D and

NOTE: Show slide 15, Military Notaries (Continued)

(2) Serve under the immediate supervision of a judge advocate or Department of the Army (DA) civilian attorney. The Glossary of Terms in AR 27-55 defines "Immediate Supervision" as under the direct guidance or management of another. Immediate supervision does not require a supervisor to be present at all times when the individual being supervised is performing his or her assigned duties, nor does it require a performance rating relationship. However, the supervisor and the person supervised must perform duty in the same general location (for example in an SJA office, or at Soldier Readiness Processing).

NOTE: Show slide 16, Military Notaries (Continued)

(c) NCOs in the grade of E6 or higher who possess a primary MOSC of 71D and are assigned as legal NCOs for Brigade or larger units, whether or not they work under the immediate supervision of a judge advocate or DA civilian attorney.

- However, Reserve Component (RC) legal NCOs must have specific authorization from their supervising SJA to perform notarial services independently in a non-duty status.

(d) All DA civilian attorneys.

(e) All adjutants, assistant adjutants, and personnel adjutants, including reserve members when not in a duty-status.

NOTE: Show slide 17, E3 and E4 Notaries

(2) SJAs may authorize soldiers in the grade of E3 and E4 with a 71D MOSC to perform as military notaries or to obtain civil notarial commissions. To authorize these soldiers as notaries, the SJA must certify each named individual and forward that certification to the Legal Assistance Policy Division, Office of The Judge Advocate General, ATTN: DAJA-LA, 1777 N. Kent Street, Rosslyn, VA 22209-2194. For certification as notary, the soldier must meet all of the following conditions:

NOTE: Show slide 18, E3 and E4 Notaries (Continued)

(a) For civil notaries, the soldier meets the requirements of AR 27-55, paragraph 2-3c.

(b) The soldier possesses appropriate judgment and maturity.

(c) The soldier is serving under the immediate supervision of a judge advocate or DA civilian attorney.

(d) The soldier has been trained in notarial services in accordance with AR 27-55, paragraph 1-7.

NOTE: Show slide 19, Authorized Recipients

(3) Military notaries may provide notarial services to the following individuals:

(a) All members of any of the United States Armed Forces.

(b) All other individuals eligible for legal assistance under 10 U.S.C. 1044, AR 27-3, and other directives and regulations of the Department of Defense (DOD).

(c) All individuals serving with, employed by, or accompanying the Armed Forces outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(d) All other individuals subject to the Uniform Code of Military Justice (UCMJ) outside the United States.

NOTE: Show slide 20, Civil Notaries

d. Commanders and SJAs may authorize the following individuals to obtain civil notarial commissions and to use these commissions in performance of their official duties:

(1) NCOs, including corporals, or legal specialists, authorized by their supervising SJA under AR 27-55, paragraph 1-6a, who possess a 71D MOSC and work under the immediate supervision of a judge advocate or a DA civilian attorney.

NOTE: Show slide 21, Civil Notaries (Continued)

(2) DA civilian employees with a grade of GS-4 or higher.

(3) NCOs in the grade of E6 or higher who possess a primary MOSC of 71D and are assigned as legal NCOs for Brigade or larger units, whether or not they work under the immediate supervision of a judge advocate or DA civilian attorney. However, RC legal NCOs must have specific authorization from their supervising SJA to perform notarial services independently in a non-duty status.

e. Commissioned and warrant officers on the active duty list of the Regular Army, and retired or Reserve commissioned and warrant officers, serving on active duty under a call to duty in excess of 180 days, will not obtain or retain commissions as civil notaries, nor accept or retain the same by election, commission, or appointment (10 U.S.C. 973b). This prohibition does not affect the authority of an officer to serve as a civil notary under AR 27-55, paragraph 2-4.

NOTE: Show slide 22, Prior to Authorizing Civil Notarial Commission

f. Before authorizing NCOs or civilian employees to obtain civil notarial commissions, Commanders and SJAs will first determine that:

(1) Applicable State or foreign law does not preclude such personnel from obtaining or utilizing commissions as notaries public.

(2) The NCOs and civilian employees authorized to obtain civil notarial commissions possess appropriate judgment and maturity.

(3) Such personnel otherwise qualify as notaries in accordance with the laws of the State or foreign nation in which they will perform notarial duties.

NOTE: Show slide 23, Civil Notaries

(4) Military personnel and civilian employees commissioned as civil notaries will comply with all limitations imposed by the laws of the State or foreign nation in which they serve when performing notarial services pursuant to the notarial authority granted by that State or foreign nation.

(5) Civil notaries will also comply with the provisions of AR 27-55 to the extent that this regulation is not inconsistent with State or foreign law when providing notarial services pursuant to State or foreign authority. For example, many States do not allow notaries to certify public documents from an official source for any purpose. Thus, to the extent that AR 27-55, paragraph 4-5 (Certifying copies of documents) is inconsistent with such State law limitations it will not be followed by civil notaries when State notarial authority is exercised.

(6) Appropriated funds may be used to reimburse military personnel and civilian employees for expenses incidental to obtaining notarial commissions for use in conjunction with the performance of their official duties (See Title 5 USC Section 5945).

(a) Reimbursement expenses may include, but are not limited to, commission fees, recording fees, surety bond (when required), seal and perforating device (and replacements when required), record book, rubber stamp, renewal fees, and any other expenses required to obtain commissions and perform notarial services as part of official duties. Reimbursement or payment of expenses will be in accordance with local procedures.

(b) Reimbursement may not be made for professional association dues and other expenses not required to obtain a notarial commission or to perform notarial services.

(7) Individuals authorized to provide notarial services, either as a military notary or a civil notary, will always seek guidance from their Staff Judge Advocate on any question they have regarding their notarial authority, responsibilities, or duties.

NOTE: Conduct a check on learning and summarize the learning activity.

3. Learning Step / Activity 3. Understand Notarial Terminology and Various Notarial Acts

Method of Instruction: Conference / Discussion
Instructor to Student Ratio: 1:16
Time of Instruction: 25 mins
Media: Small Group Instruction (SGI)

a. The Legal NCO may be authorized to perform numerous notarial functions. It is vitally important to understand and keep the terminology straight. An "Acknowledgment" is different than a "Certificate", which is different than an "Oath". We will first briefly review and discuss the definitions of frequently used notarial services. We will then discuss the formalities required when performing some of these notarial acts.

NOTE: Distribute Student Handout #2 (Notarial Terminology)

NOTE: Show slide 24, Notarial Terminology

(1) **Acknowledgment**: A formal declaration or statement before an authorized official by the individual who signs the document, that the signing of the document is his or her act and deed.

(2) **Affidavit**: A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before an individual having authority to administer such oath or affirmation.

(3) **Affirmation**: A pledge or formal declaration by an individual as to the truth of his or her statement before an individual authorized to administer the affirmation. An affirmation is often used instead of an oath.

(4) **Certificate**: A written assurance, or official representation, that some act has or has not been done, some event occurred, or some legal formality has been complied with.

(5) **Certified Copy**: A copy of a document or record, signed and certified as a true copy by the individual to whose custody the original is entrusted.

(4) **Jurat**: Latin for “been sworn,” the portion of an affidavit in which a person has sworn that the contents of his/her written statement are true, filled in by the notary public with the date, name of the person swearing, sometimes the place where sworn, and the name of the person before whom the oath was made. It reads generally: “Sworn to this 5th day of April, 2001, by George A. Figurski, before me, a notary public for said State and county. Mark A. Bridges, Notary Public.” A jurat is not to be confused with an “acknowledgment” in which the signer of a document such as a deed to real property has sworn to the notary public that he/she executed the document, and the notary signs and seals the document to that effect.

(7) **Notary**: An official, unbiased witness to the identity and signature of individuals who come before the notary for some specific purpose, such as taking an oath or affirmation, or signing a legal document.

(8) **Oath**: A pledge whereby an individual swears or affirms as to the truth of his or her statement before a person authorized to administer an oath. The individual taking the oath signifies that he or she is bound in conscience to provide the act faithfully and truthfully.

(9) **Sworn Statement**: A statement taken under oath or affirmation that the contents of the statement are true.

(10) **Witnessed**: The process of attesting to the genuineness of the signing or execution of a document by individuals (witnesses) present at the time the document was signed. Witnesses subscribe their signatures to the document for the purpose of attesting to their presence at the time the document was signed.

NOTE: Conduct a check on learning and summarize the learning activity.

4. Learning Step / Activity 4. Identify the Formalities of Notarial Acts

Method of Instruction: Conference / Discussion
Instructor to Student Ratio: 1:16
Time of Instruction: 25 mins
Media: Small Group Instruction (SGI)

NOTE: Show slide 25, Determine Requester’s Identity

a. A notary must be certain of the identity of the requester.

(1) In witnessing or attesting to a signature, notaries will determine that the individual appearing before them is the person named in the document to be signed.

NOTE: Show slide 26, Determine Requester's Identity (Continued)

(2) A notary has acceptable evidence of the identity of the individual whose signature is on a document and that this individual is within the class of individuals for whom the notarial service may be performed if that individual is:

(a) Personally known to the notary;

(b) Identified upon the oath or affirmation of a credible witness personally known to the notary;

(c) Identified by picture identification documents, such as a military identification card or driver's license.

NOTE: Show slide 27, Contents of Oath and Notarial Certifications

b. Contents of oath and notarial certifications.

(5) The signature of an individual authorized by AR 27-55 to provide oaths or other notarial services with the title of his or her office is prima facie evidence that the signature is genuine, that the individual holds the designated title, and that the individual is authorized to provide the service. An impressed or raised seal, although desirable, is not required.

NOTE: Show slide 28, Contents of Oath and Notarial Certifications – Military Notary

(2) All notarial services performed under the authority of 10 U.S.C. 1044a will also be accompanied by a citation to the authority of the individual to provide the service. QuickScribe – Notary Folder contains complete and acceptable language.

(3) While no seal is required by law for notarial services performed by military notaries, the use of a seal is desirable because it enhances the acceptability of the document notarized.

NOTE: Show slide 29, Contents of Oath and Notarial Certifications

(a) An appropriately designed raised seal should be circular in form and mounted on a metal die, suitable for impressing a raised seal on paper. About the upper periphery of the seal should appear the words, "Notary Public Authorized Under", and about the lower periphery thereof, "10 USC 1044a". In the center of the seal should appear the word, "SEAL".

(b) However, this does not invalidate notarial seals currently in use that, in the opinion of the SJA, substantially comply with the provisions of AR 27-55.

NOTE: Show slide 30, Acknowledgment

c. Acknowledgment.

(1) An acknowledgment is a formal declaration or admission made by the free act or deed of an individual and executed before a properly authorized official, such as a notary. An acknowledgment includes a certificate or written evidence of the act of acknowledgment made by the notary, as well as the act itself. Acknowledgments relate primarily to documents affecting land, and many state statutes require that deeds, mortgages, leases, and powers of attorney to convey land or an interest therein be acknowledged.

NOTE: Distribute Student Handout #3 (Sample Acknowledgment Certificate)

NOTE: Show slide 31, Acknowledgment (Continued)

(2) An acknowledgment must be made in the presence of the notary, who will identify both the individual and his or her eligibility to receive notarial services under AR 27-55. Notaries will decline to take an acknowledgment if identification is not possible. Notaries will ensure that the correct dates are properly inserted for any certificate verified or acknowledged before them. Changes, cross outs, and erasures in the body of the acknowledgment should be avoided. If unavoidable, they will be initialed by the notary wherever they appear.

NOTE: Show slide 32, Acknowledgment (Continued)

(3) If a signature has been affixed outside the notary's presence, the notarial wording included on the document must be followed. For example:

(a) In cases where the phrase "sworn to and subscribed before me" is used, the document must again be signed in the notary's presence.

(b) Where such language does not appear, the signer need only verify, affirm, or acknowledge the signature on the acknowledgment or affidavit. The notary will then compare the signature affixed with a signature made in the notary's presence and on the signer's identification.

NOTE: Show slide 33, Acknowledgment (Continued)

(4) Some States and foreign law requires witnesses in matters pertaining to real estate. Since the document is prepared by competent authority, the notary should ensure that the proper number of witnesses attest in their presence. The notary should examine the document to determine the appropriate number of witnesses. The use of three (3) witnesses will comply with the laws of almost every jurisdiction. The name, grade, branch of service, and Social Security Number (SSN) of each witness should be typed or printed below the signature of each witness.

NOTE: Distribute Student Handout #4 (Sample Signature Block with Witnesses)

NOTE: Show slide 34, Acknowledgment (Continued)

(5) Some State statutes and foreign laws require that instruments conveying real or personal property be executed under seal. Therefore, in the space immediately preceding the signature of the individual selling property or appointing an attorney in fact to do so, there should appear the statement, "Witness by my hand and seal", or words to that effect. In most jurisdictions, the typing, printing, or writing of the word, "SEAL", or the symbol, "LS", after the signature will complete the sealing of the instrument. A seal need only be used if required by applicable law.

NOTE: Show slide 35, Oaths and Affirmations

d. Oaths and Affirmations.

(1) Oaths or affirmations are used when taking affidavits or sworn documents.

(2) Individuals administering an oath or affirmation should direct the individual taking the oath or affirmation to stand, raise his or her right hand, and say the following: "Do you swear or affirm that the information contained in this document is the truth to the best of your knowledge and belief (so help you God)?"

NOTE: Show slide 36, Oaths and Affirmations (Continued)

(3) The response should be, "I do", or "I affirm", or similar words of assent to either the oath or affirmation. After the response is given, the individual taking the oath or affirmation should sign the document.

NOTE: Distribute Student Handout #5 (Sample Sworn or Affirmed Document)

(4) The following Army personnel on active duty or performing inactive duty training are authorized to administer oaths for all purposes of military administration, including, but not limited to, military justice, legal assistance, and claims.

(a) All individuals granted authority as military notaries under AR 27-55, paragraph 2-2a.

(b) All summary courts-martial.

(c) Individuals empowered to authorize searches pursuant to Military Rules of Evidence 315(d), Manual for Courts Martial, 2000, for any purpose relating to search authorizations.

(5) The following Army personnel are authorized to administer oaths to any individual when the oath is administered in conjunction with duties related to these positions.

(a) President, military judge, trial counsel, and assistant trial counsel for all general and special courts-martial.

(b) President and counsel for any court of inquiry.

(c) All officers designated to take depositions.

(d) Any individual conducting an authorized investigation.

(e) All recruiting officers.

(f) Civilian personnel officers and their designated representatives.

(6) Any active or Reserve commissioned officer, whether or not on active duty, may administer:

(a) An oath of enlistment (10 U.S.C. 502).

(b) An oath required for the enlistment or appointment of any individual in the Armed Forces (10 U.S.C. 1031).

(c) Any other oath required by law in connection with enlistment or appointment of any individual in the Armed Forces (10 U.S.C. 1031).

NOTE: Show slide 37, Certified Copies of Documents

e. Certifying copies of documents.

(6) Certified means “true and exact” copy.

(7) A Notary may make certified copies of some original documents provided that the notary determines that the copy to be certified is a full, true, and accurate transcription or reproduction of the original document, by carefully and personally comparing the copy and original or observing the copying process. A Notary should have a stamp that reads, “This is a true and exact copy of the original document.”

NOTE: Show slide 38, Certified Copies of Documents (Continued)

(3) Notaries will not make certified copies of public records or of publicly recorded documents when a certified copy of the record document is available from an official source other than a notary. These public records may include court records, birth certificates, marriage certificates, death certificates, and car titles. Nothing in this section should be construed to preclude designated officials in Army agencies from authenticating or certifying documents prepared by, or held for, public review by such Army agencies.

NOTE: Show slide 39, Certified Copies of Documents (Continued)

(4) Military notaries may certify copies of public records or publicly recorded documents from an official source for the following limited purposes:

(a) Military administration, including finance and personnel administration.

(b) Federal administration where allowed by law or other regulation. For example, the Immigration and Naturalization Service (INS) allows licensed attorneys to certify documents for the purposes of Petitions for Naturalization and Citizenship. Moreover, the Department of Veterans Affairs (VA) allows designated judge advocates to certify documents for VA administration.

(c) Certification of copies of public records or publicly recorded documents from an official source for the above-listed authorized purposes will state the purpose for which certified. For example: “Certified Copy for DFAS”, or “Certified Copy for VA.”

NOTE: Conduct a check on learning and summarize the learning activity.

5. Learning Step / Activity 5. Discuss the Prohibitions Regarding Notarial Services

Method of Instruction: Conference / Discussion
Instructor to Student Ratio: 1:16
Time of Instruction: 25 mins
Media: Small Group Instruction (SGI)

NOTE: Distribute Student Handout #6 (List of Notarial Prohibitions)

a. Legal NCOs must be aware of specific prohibitions regarding their authority to perform notarial services. They must not violate, nor permit their subordinates or other Legal Assistance personnel, to violate these prohibitions outlined in AR 27-55, paragraph 3-4.

NOTE: Show slide 40, Prohibitions

b. Individuals authorized to provide notarial services will not:

(1) Notarize unsigned documents.

(2) Certify the authenticity of public, official, registered, or court records or documents, nor issue certified copies of such documents or records unless allowed to do so under this regulation or other applicable law or regulation. (See AR 27-55, paragraph 4-5, and paragraph 4e(3) above)

(3) Take an affidavit or an acknowledgment unless the individual who signed the document is actually in their presence. If an oath or affirmation is authorized or required, the notary will administer the oath or affirmation to the individual in person.

NOTE: Show slide 41, Prohibitions (Continued)

(4) Execute a notarial certificate containing a statement known by the notary to be false.

(5) Perform any action with intent to deceive, such as predating or postdating a document.

(6) Authenticate the signature of an individual who did not personally appear before the notary at the time his or her signature was affixed to the document, except as noted in AR 27-55, paragraph 4-3c, and paragraph 4c(3) above.

NOTE: Show slide 42, Prohibitions (Continued)

(7) Perform a notarial act or take an acknowledgment when the notary is a party to, or directly or pecuniarily interested in the transaction.

(8) Serve as the only witness and as a notary in the same transaction

(9) Solemnize marriages as part of their official notarial duties, even if authorized to do so under a State or foreign law granting notaries such authority.

(10) Provide legal advice unless the notary is also an attorney.

(a) A notary may draft an appropriate power of attorney and answer basic questions concerning that draft, the non-attorney notary may not provide legal advice nor interpretation.

NOTE: Show slide 43, Prohibitions (Continued)

(11) Notarize a general power of attorney before determining that the client has received advice from an attorney on the nature and effect of a general power of attorney.

NOTE: The attorney may advise the client in person, via telephone, in a videotaped briefing, or by a written handout signed by the attorney.

(12) Perform notarial services as an RC enlisted notary in a non-duty status without the prior approval of their supervising SJA.

c. Notarial authority will not be delegated to another person.

NOTE: Show slide 44, Prohibitions (Continued)

d. No notary will perform, nor be ordered or otherwise required to perform, a notarial act that the notary believes:

(1) Is for a transaction which the notary knows or suspects is illegal, false, or deceptive.

(2) Is for a person who is being coerced.

(3) Is for a person whose demeanor causes compelling doubts about whether the person knows the consequences of the transaction requiring the notarial act.

(4) Impugns or compromises the notary's impartiality.

(5) Is prohibited under AR 27-55 and/or State law.

NOTE: Show slide 45, Prohibitions (Continued)

e. Military personnel and civilian employees reimbursed by the United States Government for the costs and expenses associated with obtaining and using their civil notarial commission and seal in performance of their official duties may provide notarial services privately, as long as such services are provided without the use of Government property when they are off duty and off the installation. No fee may be paid to, or received by, Army personnel, whether civilian or military, for providing notarial services during the course of their duties under AR 27-55.

NOTE: Show slide 46, Misconduct

f. Commanders and SJAs may revoke or suspend the authority of any person to provide notarial services as part of his or her official duties for failure to comply with this regulation or other applicable laws regarding the provision of notarial services.

NOTE: Show slide 47, Misconduct (Continued)

(1) Military members may be punished under the UCMJ, Article 92, for dereliction of duty, or Article 107, for false official statement.

(2) Military and civilian personnel are also subject to adverse administrative or adverse personnel actions.

NOTE: Show slide 48, Misconduct (Continued)

(3) In addition, military and civilian personnel may be subject to personal liability, including damages, for losses suffered by others arising from their failure to perform notarial services in accordance with AR 27-55 and applicable laws.

(2) Members of the Army National Guard (ARNG), not in Federal (Title 10) service are not subject to the UCMJ, but are subject to the applicable provisions of State codes of military justice or other State law.

(3) Civil notaries are subject to prosecution by the issuing State for misconduct.

NOTE: Conduct a check on learning and summarize the learning activity.

6. Learning Step / Activity 6. Identify the Types of Powers of Attorney, including their Dangers and Procedures to Revoke/Terminate

Method of Instruction: Conference / Discussion
Instructor to Student Ratio: 1:16
Time of Instruction: 25 mins
Media: Small Group Instruction (SGI)

NOTE: Show slide 49, Power of Attorney

a. One of the legal documents military or civil notaries will most often prepare and notarize in a Legal Assistance Office is the power of attorney. A power of attorney is a written instrument executed by one person, the principal, designating another individual, the agent or "attorney-in-fact", to perform specified acts on the principal's behalf. A power of attorney notifies third parties of the agent's authority.

NOTE: Show slide 50, Types of POA

b. A power of attorney is usually designated as either "special" or "general" depending on the specified act(s), or kind(s) of act(s), for which authority to act on behalf of the principal has been given.

(1) A general power of attorney gives broad powers and authority to the agent or attorney-in-fact.

(2) A special power of attorney limits the power or authority given to the agent or attorney-in-fact to the specific act or acts described in the instrument. For example, a principal may give his or her agent a special power of attorney for the specific purpose of selling the principal's car, accepting the delivery of the principal's household goods shipment, or providing medical care for the principal's children.

NOTE: Show slide 51, State Recognition of Military Powers of Attorney (POA)

NOTE: Distribute Student Handout #7 (10 U.S.C. 1044b)

c. 10 U.S.C. 1044b codifies the requirement for States to recognize military powers of attorney. The statute intends to increase the acceptability of general and special powers of attorney prepared by a military legal assistance office.

NOTE: Show slide 52, State Recognition of Military Powers of Attorney (POA) (Continued)

(1) 10 U.S.C. 1044b(a) states that a military power of attorney is to be given legal effect without regard to State law. 10 U.S.C. 1044b(a) further specifies that a military power of attorney:

(a) is exempt from any requirements of form, substance, formality, or recording that is provided for powers of attorney under the laws of a State; and

(b) shall be given the same legal effect as a power of attorney prepared and executed in accordance with the laws of the State concerned

NOTE: Show slide 53, State Recognition of Military Powers of Attorney (POA) (Continued)

(2) 10 U.S.C. 1044b(b) defines a military power of attorney as any general or special power of attorney that is notarized in accordance with 10 U.S.C. 1044a or other applicable State or Federal law.

NOTE: Show slide 54, Prescribed Preamble for Military POA

(3) In accordance with 10 U.S.C. 1044b(c), each military power of attorney shall contain a statement that sets forth the provisions of 10 U.S.C. 1044b(a). Listed below is a PRESCRIBED PREAMBLE FOR MILITARY POWERS OF ATTORNEY. It should be inserted at the beginning of each general and special power of attorney in capital letters.

NOTE: Show slide 55, Prescribed Preamble for Military POA (Continued)

"THIS IS A MILITARY POWER OF ATTORNEY PREPARED PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 1044b AND EXECUTED BY A PERSON AUTHORIZED TO RECEIVE LEGAL ASSISTANCE FROM THE MILITARY SERVICES. FEDERAL LAW EXEMPTS THIS POWER OF ATTORNEY FROM ANY REQUIREMENT OF FORM, SUBSTANCE, FORMALITY OR RECORDING THAT IS PRESCRIBED FOR POWERS OF ATTORNEY UNDER THE LAWS OF A STATE, THE DISTRICT OF COLUMBIA, OR A TERRITORY, COMMONWEALTH, OR POSSESSION OF THE UNITED STATES. FEDERAL LAW SPECIFIES THAT THIS POWER OF ATTORNEY SHALL BE GIVEN THE SAME LEGAL EFFECT AS A POWER OF ATTORNEY PREPARED AND EXECUTED IN ACCORDANCE WITH THE LAWS OF THE JURISDICTION WHERE IT IS PRESENTED."

(4) Within the provisions of 10 U.S.C. 1044b, the term, "State", includes the District of Columbia, the Commonwealth of Puerto Rico, and a possession of the United States (See 10 U.S.C. 1044b(d)). Therefore, all 50 States, the District of Columbia, Puerto Rico, and United States' possessions must give legal effect to military powers of attorney.

NOTE: Show slide 56, Dangers of POA

c. A power of attorney can be dangerous to the principal if improperly used by the agent. No law requires third parties to recognize the authority of the agent to act on the principal's behalf as set forth in the power of attorney. However, the majority of persons, businesses, and institutions will do so.

(1) Therefore, a person should execute a power of attorney only when a reasonable or immediate need for the power of attorney exists.

NOTE: Show slide 57, Dangers of POA (Continued)

(2) Legal Assistance clients and power of attorney principals should be fully advised of the inherent dangers involved in granting to another the authority to act in their stead.

(3) In fact, AR 27-55, paragraph 3-4a(11), prohibits individuals authorized to provide notarial services from notarizing a general power of attorney without first

determining that the client has received advice from an attorney on the nature and effect of a general power of attorney. The legal assistance attorney or civilian attorney must counsel the prospective principal on the dangers of executing a general power of attorney. Additionally, the attorney must ascertain whether a special or limited power of attorney would accomplish the purpose for which the general power of attorney is requested.

(4) Since a general power of attorney gives such broad powers and authority to the agent, the principal must have the utmost trust and confidence in the agent.

NOTE: Show slide 58, Termination or Revocation of POA

d. Both special and general powers of attorney should include provisions detailing how the power of attorney may be terminated or revoked.

(1) It is advisable to insert a termination clause in all powers of attorney. For example, the principal may want the power of attorney to expire on or about the date of his or her expected return from an overseas tour of duty. This prevents the power of attorney from being indefinite in duration and terminates it on a specific date, unless sooner revoked.

NOTE: Show slide 59, Termination or Revocation of POA (Continued)

(2) If no expiration date is contained in the power of attorney, it continues in effect until terminated by statutory provisions for termination; operation of law, such as the death of the principal or agent; or an act of the principal or agent evidencing an intent to revoke the power of attorney.

NOTE: Show slide 60, Termination or Revocation of POA (Continued)

(3) Under no circumstances should an unrestricted general power of attorney be used or produced unless it contains a specific termination date or other provisions for revocation.

NOTE: Show slide 61, Termination or Revocation of POA (Continued)

(4) If no termination date is inserted in a power of attorney, or if the principal wishes to revoke the power of attorney prior to its stated termination date, notice of the revocation must be given to the agent. Such revocation notice preferably should be in writing, although it may be made orally. The agent should be requested to acknowledge receipt of the revocation notice. Ordinarily, the revocation of the power of attorney takes effect as soon as it is communicated to the agent.

NOTE: Show slide 62, Termination or Revocation of POA (Continued)

(5) As to third parties that have dealt with the agent regarding the power of attorney, the revocation takes effect when the third parties receive notice of the revocation. Third parties may include businesses; financial institutions, such as banks; schools; or medical facilities. When a statute provides for the recording and revocation of powers of attorney, third parties that do not have notice of an unrecorded revocation may be justified in relying on the continuance of the authority of the power of attorney as recorded.

NOTE: Show slide 63, Incapacity of Principal

(6) In some States, the power of attorney terminates upon the incapacity of the principal, notwithstanding that the power of attorney has no termination date or the termination date is subsequent to the date upon which the incapacity occurs.

NOTE: Show slide 64, Incapacity of Principal (Continued)

(7) However, a Durable Power of Attorney may remain valid and operative despite the incapacity of the principal. A Durable Power of Attorney give powers to agents to act even during the incapacity of the principal. Durable Powers of Attorney are based on State Law, not Federal Law. Therefore, a Legal NCO should consult the specific State Law where his or her military installation is located to learn more about Durable Powers of Attorney within the jurisdiction.

NOTE: Conduct a check on learning and summarize the learning activity.

7. Learning Step / Activity 7. Discuss the Importance and Maintenance of a Notarial Log

Method of Instruction: Conference / Discussion
Instructor to Student Ratio: 1:16
Time of Instruction: 20 mins
Media: Small Group Instruction (SGI)

NOTE: Show slide 65, Notarial Log

NOTE: Distribute Student Handout #8 (Sample Notary Log)

a. Notaries must be able to confirm notary services they performed many years after the service was provided. It is imperative, therefore, that notaries be consistent in the manner they provide these services.

b. Commanders and SJAs may direct the use of appropriate techniques that allow confirmation of specific notarial services performed. For example, they may require notaries under their command or supervision to keep notarial logs. A notarial log may include the names and signatures of the individuals whose signatures or documents were notarized, the general nature of the documents, and the dates and locations the notarial services were performed. Such logs will not be made part of any Army system of records, but should be retained in the possession of the notary.

NOTE: Show slide 66, Notarial Log (Continued)

c. Military notaries must be obsessive about maintaining their notarial log. These logs must remain with the notary even when they are reassigned to another section within the Legal Office, PCS to another military installation, or retire. It is crucial that a notary maintain and retain this document. In the future, a third party may call the notary inquiring about a document that he or she has notarized. Without this log, the notary may have no independent knowledge or find it extremely difficult to recall this specific document, legal assistance client, or notarization event. You must retain and maintain your notarial log, irrespective and independent of the information maintained on your Legal Assistance Office's Client Information System computer database or client cards.

d. Civil notaries will fully comply with applicable laws requiring them to maintain logs.

NOTE: Conduct a check on learning and summarize the learning activity.

SECTION IV. SUMMARY

Method of Instruction: <u>Conference / Discussion</u>
Instructor to Student Ratio is: <u>1:16</u>
Time of Instruction: <u>5 mins</u>
Media: <u>Small Group Instruction (SGI)</u>

Check on Learning

Determine if the students have learned the material presented by soliciting student questions and explanations. Ask the students questions and correct misunderstandings.

Review / Summarize Lesson

SUMMARY: During this lesson we learned about the specific authority for performing notarial services; who is authorized to perform these services; the differences among specific notarial terminology and acts; specific prohibitions regarding notarial acts; and the importance of maintaining and retaining your individual notarial log.

CLOSING: Notarial services are a great and complex responsibility for Legal NCOs working in an Army Legal Assistance Office. It is vitally important to meticulously follow the rules and procedures outlined in this lesson. If you do, you will do your part in ensuring the military preparedness and readiness of your military unit; efficiently provide this important "quality of life" legal assistance service to authorized persons; and find this duty professionally rewarding.
